

**Executive Summary – Enforcement Matter – Case No. 47838**

**Gibson Real Estate, LLC**

**RN103732483**

**Docket No. 2013-1945-PST-E**

**Order Type:**

1660 Agreed Order

**Findings Order Justification:**

N/A

**Media:**

PST

**Small Business:**

Yes

**Location(s) Where Violation(s) Occurred:**

Gibson Real Estate, LLC, 5511 Dietrich Road, San Antonio, Bexar County

**Type of Operation:**

Fleet refueling facility

**Other Significant Matters:**

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

**Texas Register Publication Date:** January 31, 2014

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$11,382

**Amount Deferred for Expedited Settlement:** \$2,276

**Amount Deferred for Financial Inability to Pay:** \$0

**Total Paid to General Revenue:** \$9,106

**Total Due to General Revenue:** \$0

Payment Plan: N/A

**SEP Conditional Offset:** \$0

Name of SEP: N/A

**Compliance History Classifications:**

Person/CN - Unclassified

Site/RN - Unclassified

**Major Source:** No

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2002 and September 2011

**Executive Summary – Enforcement Matter – Case No. 47838**  
**Gibson Real Estate, LLC**  
**RN103732483**  
**Docket No. 2013-1945-PST-E**

***Investigation Information***

**Complaint Date(s):** N/A

**Complaint Information:** N/A

**Date(s) of Investigation:** October 9, 2012

**Date(s) of NOE(s):** September 11, 2013

***Violation Information***

1. Failed to renew a previously issued under ground storage tank (“UST”) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date. Specifically, the delivery certificate expired on September 30, 2009 [30 TEX. ADMIN. CODE § 334.8(c)(4)(A)(vii) and (c)(5)(B)(ii)].
2. Failed to make available to a common carrier a valid, current UST delivery certificate before accepting delivery of a regulated substance into the USTs. Specifically, one fuel delivery was accepted without a valid delivery certificate [30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a)].
3. Failed to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) [30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1)].
4. Failed to provide release detection for the pressurized piping associated with the UST system. Specifically, the annual piping tightness and line leak detector tests had not been conducted [30 TEX. ADMIN. CODE § 334.50(b)(2) and TEX. WATER CODE § 26.3475(a)].
5. Failed to maintain UST records and make them immediately available for inspection upon request by TCEQ personnel [30 TEX. ADMIN. CODE § 334.10(b)(1)(B)].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

N/A

**Technical Requirements:**

The Order will require the Respondent to:

- a. Immediately, cease accepting fuel until such time as a valid delivery certificate is obtained from the TCEQ by submitting a properly completed UST registration and self-certification form.
- b. Within 30 days:
  - i. Implement a release detection method for the USTs and the piping associated with the UST system at the Facility; and

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**Gibson Real Estate, LLC**

**RN103732483**

**Docket No. 2013-1945-PST-E**

ii. Begin maintaining UST records and make them immediately available for inspection upon request by TCEQ personnel.

c. Within 45 days, submit written certification demonstrating compliance with Ordering Provision a. through b.ii.

***Litigation Information***

**Date Petition(s) Filed:** N/A

**Date Answer(s) Filed:** N/A

**SOAH Referral Date:** N/A

**Hearing Date(s):** N/A

**Settlement Date:** N/A

***Contact Information***

**TCEQ Attorney:** N/A

**TCEQ Enforcement Coordinator:** David Carney, Enforcement Division, Enforcement Team 5, MC 149, (512) 239-2583; Candy Garrett, Enforcement Division, MC 219, (512) 239-1456

**TCEQ SEP Coordinator:** N/A

**Respondent:** Melissa Keller, Comptroller, Gibson Real Estate, LLC, P.O. Box 200046, San Antonio, Texas 78220

Bret Bartley, General Manager, Gibson Plumbing Company, 5511 Dietrich Road, San Antonio, Texas 78219

**Respondent's Attorney:** N/A





# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	16-Sep-2013	<b>Screening</b>	10-Oct-2013	<b>EPA Due</b>	
	<b>PCW</b>	15-Oct-2013				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	Gibson Real Estate, LLC
<b>Reg. Ent. Ref. No.</b>	RN103732483
<b>Facility/Site Region</b>	13-San Antonio
<b>Major/Minor Source</b>	Minor

## CASE INFORMATION

<b>Enf./Case ID No.</b>	47838	<b>No. of Violations</b>	1
<b>Docket No.</b>	2013-1945-PST-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Petroleum Storage Tank	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	David Carney
		<b>EC's Team</b>	Enforcement Team 5
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	<b>\$5,000</b>
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## ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

<b>Compliance History</b>	<b>0.0%</b> Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	<b>\$0</b>
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Notes: No adjustment for compliance history.

<b>Culpability</b>	<b>No</b>	<b>0.0%</b> Enhancement	<b>Subtotal 4</b>	<b>\$0</b>
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Notes: The Respondent does not meet the culpability criteria.

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	<b>\$0</b>
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<b>Economic Benefit</b>	<b>0.0%</b> Enhancement*	<b>Subtotal 6</b>	<b>\$0</b>
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Total EB Amounts: \$502  
Approx. Cost of Compliance: \$500  
\*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	<b>\$5,000</b>
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	<b>9.9%</b>	<b>Adjustment</b>	<b>\$497</b>
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Enhancement to capture the avoided cost of compliance associated with the violation.

<b>Final Penalty Amount</b>	<b>\$5,497</b>
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	<b>\$5,497</b>
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<b>DEFERRAL</b>	<b>20.0%</b> Reduction	<b>Adjustment</b>	<b>-\$1,099</b>
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral offered for expedited settlement.

<b>PAYABLE PENALTY</b>	<b>\$4,398</b>
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Screening Date 10-Oct-2013

Docket No. 2013-1945-PST-E

PCW

Respondent Gibson Real Estate, LLC

Policy Revision 2 (September 2002)

Case ID No. 47838

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN103732483

Media [Statute] Petroleum Storage Tank

Enf. Coordinator David Carney

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Unclassified

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

No adjustment for compliance history.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) 0%

Screening Date 10-Oct-2013

Docket No. 2013-1945-PST-E

PCW

Respondent Gibson Real Estate, LLC

Policy Revision 2 (September 2002)

Case ID No. 47838

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN103732483

Media [Statute] Petroleum Storage Tank

Enf. Coordinator David Carney

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 334.8(c)(4)(A)(vii) and (c)(5)(B)(ii)

Violation Description

Failed to renew a previously issued underground storage tank ("UST") delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date. Specifically, the delivery certificate expired on September 30, 2009.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Major	Harm Moderate	Minor
Actual			
Potential			

Percent 0%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix  
Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

## Violation Events

Number of Violation Events 5

1471 Number of violation days

mark only one  
with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	x
single event	

Violation Base Penalty \$5,000

Five annual events are recommended from the September 30, 2009 expiration date to the October 10, 2013 screening date.

## Good Faith Efforts to Comply

0.0% Reduction

\$0

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$5,000

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$502

Violation Final Penalty Total \$5,497

This violation Final Assessed Penalty (adjusted for limits) \$5,497

# Economic Benefit Worksheet

**Respondent** Gibson Real Estate, LLC  
**Case ID No.** 47838  
**Reg. Ent. Reference No.** RN103732483  
**Media** Petroleum Storage Tank  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

## Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$100	11-Sep-2013	10-Jul-2014	0.83	\$4	n/a	\$4

### Notes for DELAYED costs

Estimated cost to renew a delivery certificate by submitting a properly completed UST registration and self-certification form. The Date Required is the record review date and the Final Date is the estimated date of compliance.

## Avoided Costs

### ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)	\$400	30-Sep-2009	11-Sep-2013	4.87	\$97	\$400	\$497

### Notes for AVOIDED costs

Estimated avoided cost (\$100 per full year) to accurately prepare and submit a UST registration and self-certification form and obtain a valid UST delivery certificate 30 days prior to the expiration date. The Date Required is the expiration date and the Final Date is the record review date.

Approx. Cost of Compliance

\$500

**TOTAL**

\$502





# Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

<b>DATES</b>	<b>Assigned</b>	16-Sep-2013	<b>Screening</b>	10-Oct-2013	<b>EPA Due</b>	
	<b>PCW</b>	15-Oct-2013				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	Gibson Real Estate, LLC
<b>Reg. Ent. Ref. No.</b>	RN103732483
<b>Facility/Site Region</b>	13-San Antonio
<b>Major/Minor Source</b>	Minor

## CASE INFORMATION

<b>Enf./Case ID No.</b>	47838	<b>No. of Violations</b>	3
<b>Docket No.</b>	2013-1945-PST-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Petroleum Storage Tank	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	David Carney
		<b>EC's Team</b>	Enforcement Team 5
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$25,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	<b>\$5,750</b>
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## ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

<b>Compliance History</b>	<b>0.0%</b> Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	<b>\$0</b>
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Notes No adjustment for compliance history.

<b>Culpability</b>	<b>No</b>	<b>0.0%</b> Enhancement	<b>Subtotal 4</b>	<b>\$0</b>
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Notes The Respondent does not meet the culpability criteria.

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	<b>\$0</b>
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<b>Economic Benefit</b>	<b>0.0%</b> Enhancement*	<b>Subtotal 6</b>	<b>\$0</b>
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Total EB Amounts \$310  
Approx. Cost of Compliance \$2,118  
\*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	<b>\$5,750</b>
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	<b>2.3%</b>	<b>Adjustment</b>	<b>\$135</b>
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes Enhancement to capture the avoided cost of compliance associated with Violation No. 2.

<b>Final Penalty Amount</b>	<b>\$5,885</b>
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	<b>\$5,885</b>
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<b>DEFERRAL</b>	<b>20.0%</b> Reduction	<b>Adjustment</b>	<b>-\$1,177</b>
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes Deferral offered for expedited settlement.

<b>PAYABLE PENALTY</b>	<b>\$4,708</b>
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Screening Date 10-Oct-2013

Docket No. 2013-1945-PST-E

PCW

Respondent Gibson Real Estate, LLC

Policy Revision 3 (September 2011)

Case ID No. 47838

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN103732483

Media [Statute] Petroleum Storage Tank

Enf. Coordinator David Carney

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%

Please Enter Yes or No

Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Unclassified

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

No adjustment for compliance history.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, &amp; 7) 0%

## &gt;&gt; Final Compliance History Adjustment

Final Adjustment Percentage \*capped at 100% 0%

Screening Date 10-Oct-2013

Docket No. 2013-1945-PST-E

PCW

Respondent Gibson Real Estate, LLC

Policy Revision 3 (September 2011)

Case ID No. 47838

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN103732483

Media [Statute] Petroleum Storage Tank

Enf. Coordinator David Carney

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 334.8(c)(5)(A)(i) and Tex. Water Code § 26.3467(a)

Violation Description

Failed to make available to a common carrier a valid, current underground storage tank ("UST") delivery certificate before accepting delivery of a regulated substance into the USTs. Specifically, one fuel delivery was accepted without a valid delivery certificate.

Base Penalty \$25,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Major	Harm Moderate	Minor
Actual			
Potential			x

Percent 3.0%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix  
Notes

Human health or the environment will or could be exposed to insignificant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$24,250

\$750

## Violation Events

Number of Violation Events 1

1 Number of violation days

mark only one  
with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$750

One single event is recommended for accepting one fuel delivery without a valid delivery certificate.

## Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$750

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$768

This violation Final Assessed Penalty (adjusted for limits) \$768

# Economic Benefit Worksheet

Respondent Gibson Real Estate, LLC  
 Case ID No. 47838  
 Reg. Ent. Reference No. RN103732483  
 Media Petroleum Storage Tank  
 Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

## Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Economic benefit included in Violation No. 1 of the Penalty Policy Revision 2 PCW.

## Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$0

TOTAL

\$0

Screening Date 10-Oct-2013

Docket No. 2013-1945-PST-E

PCW

Respondent Gibson Real Estate, LLC

Policy Revision 3 (September 2011)

Case ID No. 47838

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN103732483

Media [Statute] Petroleum Storage Tank

Enf. Coordinator David Carney

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 334.50(b)(1)(A) and (b)(2) and Tex. Water Code § 26.3475(a) and (c)(1)

Violation Description

Failed to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring). Also, failed to provide release detection for the pressurized piping associated with the UST system. Specifically, the annual piping tightness and line leak detector tests had not been conducted.

Base Penalty \$25,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 15.0%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$21,250

\$3,750

## Violation Events

Number of Violation Events 1

29 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	x
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty \$3,750

One monthly event is recommended from the September 11, 2013 record review date to the October 10, 2013 screening date.

## Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$3,750

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$266

Violation Final Penalty Total \$3,838

This violation Final Assessed Penalty (adjusted for limits) \$3,838



# Economic Benefit Worksheet

**Respondent** Gibson Real Estate, LLC  
**Case ID No.** 47838  
**Reg. Ent. Reference No.** RN103732483  
**Media** Petroleum Storage Tank  
**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

## Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$1,500	9-Oct-2012	10-Jul-2014	1.75	\$131	n/a	\$131

### Notes for DELAYED costs

Estimated cost to implement a release detection method for the USTs at the Facility. The Date Required is the investigation date and the Final Date is the estimated date of compliance.

## Avoided Costs

### ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$118	9-Oct-2011	11-Sep-2013	2.84	\$17	\$118	\$135
Other (as needed)				0.00	\$0	\$0	\$0

### Notes for AVOIDED costs

Estimated cost to conduct the annual piping tightness and line leak detector tests. The Date Required is one year prior to the investigation date and the Final Date is the record review date.

Approx. Cost of Compliance

\$1,618

**TOTAL**

\$266

Screening Date 10-Oct-2013

Docket No. 2013-1945-PST-E

PCW

Respondent Gibson Real Estate, LLC

Policy Revision 3 (September 2011)

Case ID No. 47838

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN103732483

Media [Statute] Petroleum Storage Tank

Enf. Coordinator David Carney

Violation Number 3

Rule Cite(s)

30 Tex. Admin. Code § 334.10(b)(1)(B)

## Violation Description

Failed to maintain UST records and make them immediately available for inspection upon request by TCEQ personnel.

Base Penalty \$25,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 5.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$23,750

\$1,250

## Violation Events

Number of Violation Events 1

1 Number of violation days

mark only one  
with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$1,250

One single event is recommended.

## Good Faith Efforts to Comply

0.0% Reduction

\$0

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$1,250

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$44

Violation Final Penalty Total \$1,279

This violation Final Assessed Penalty (adjusted for limits) \$1,279

# Economic Benefit Worksheet

**Respondent** Gibson Real Estate, LLC  
**Case ID No.** 47838  
**Reg. Ent. Reference No.** RN103732483  
**Media** Petroleum Storage Tank  
**Violation No.** 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

## Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$500	9-Oct-2012	10-Jul-2014	1.75	\$44	n/a	\$44
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to maintain UST records and make them immediately available for inspection upon request by TCEQ personnel. The Date Required is the investigation date and the Final Date is the estimated date of compliance.

## Avoided Costs

**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$500

**TOTAL** \$44





# Compliance History Report

**PENDING** Compliance History Report for CN603556796, RN103732483, Rating Year 2013 which includes Compliance History (CH) components from September 1, 2008, through August 31, 2013.

<b>Customer, Respondent, or Owner/Operator:</b>	CN603556796, Gibson Real Estate, LLC	<b>Classification:</b>	UNCLASSIFIED	<b>Rating:</b>	-----
<b>Regulated Entity:</b>	RN103732483, Gibson Plumbing	<b>Classification:</b>	UNCLASSIFIED	<b>Rating:</b>	-----
<b>Complexity Points:</b>	2	<b>Repeat Violator:</b>	NO		
<b>CH Group:</b>	09 - Construction				
<b>Location:</b>	5511 DIETRICH ROAD, SAN ANTONIO, TEXAS 78219-2902, BEXAR COUNTY				
<b>TCEQ Region:</b>	REGION 13 - SAN ANTONIO				
<b>ID Number(s):</b>	PETROLEUM STORAGE TANK REGISTRATION 19796				
<b>Compliance History Period:</b>	September 01, 2008 to August 31, 2013	<b>Rating Year:</b>	2013	<b>Rating Date:</b>	09/01/2013
<b>Date Compliance History Report Prepared:</b>	September 17, 2013				
<b>Agency Decision Requiring Compliance History:</b>	Enforcement				
<b>Component Period Selected:</b>	September 17, 2008 to September 17, 2013				
<b>TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.</b>					
<b>Name:</b>	David Carney		<b>Phone:</b>	(512) 239-2583	

## Site and Owner/Operator History:

- 1) Has the site been in existence and/or operation for the full five year compliance period? YES
- 2) Has there been a (known) change in ownership/operator of the site during the compliance period? NO
- 3) If YES for #2, who is the current owner/operator? N/A
- 4) If YES for #2, who was/were the prior owner(s)/operator(s)? N/A
- 5) If YES, when did the change(s) in owner or operator occur? N/A

## Components (Multimedia) for the Site Are Listed in Sections A - J

### **A. Final Orders, court judgments, and consent decrees:**

N/A

### **B. Criminal convictions:**

N/A

### **C. Chronic excessive emissions events:**

N/A

### **D. The approval dates of investigations (CCEDS Inv. Track. No.):**

N/A

### **E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):**

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

N/A

### **F. Environmental audits:**

N/A

**G. Type of environmental management systems (EMSs):**

N/A

**H. Voluntary on-site compliance assessment dates:**

N/A

**I. Participation in a voluntary pollution reduction program:**

N/A

**J. Early compliance:**

N/A

**Sites Outside of Texas:**

N/A

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
GIBSON REAL ESTATE, LLC  
RN103732483**

**§        BEFORE THE  
§  
§        TEXAS COMMISSION ON  
§  
§        ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2013-1945-PST-E**

### **I. JURISDICTION AND STIPULATIONS**

On \_\_\_\_\_, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Gibson Real Estate, LLC ("Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent together stipulate that:

1. The Respondent owns and operates a fleet refueling facility at 5511 Dietrich Road in San Antonio, Bexar County, Texas (the "Facility").
2. The Respondent's two underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.
3. The Executive Director and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about September 16, 2013.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Eleven Thousand Three Hundred Eighty-Two Dollars (\$11,382) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Nine Thousand One Hundred Six Dollars (\$9,106) of the administrative penalty and Two Thousand Two Hundred Seventy-

Six Dollars (\$2,276) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director and the Respondent agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a).
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## **II. ALLEGATIONS**

As owner and operator of the Facility, the Respondent is alleged to have:

1. Failed to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(4)(A)(vii) and (c)(5)(B)(ii), as documented during an investigation conducted on October 9, 2012 and a record review conducted on September 11, 2013. Specifically, the delivery certificate expired on September 30, 2009.
2. Failed to make available to a common carrier a valid, current UST delivery certificate before accepting delivery of a regulated substance into the USTs, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a), as documented during an investigation conducted on October 9, 2012 and a record review conducted on September 11, 2013. Specifically, one fuel delivery was accepted without a valid delivery certificate.
3. Failed to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), in violation of 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1), as documented during an investigation conducted on October 9, 2012 and a record review conducted on September 11, 2013.

4. Failed to provide release detection for the pressurized piping associated with the UST system, in violation of 30 TEX. ADMIN. CODE § 334.50(b)(2) and TEX. WATER CODE § 26.3475(a), as documented during an investigation conducted on October 9, 2012 and a record review conducted on September 11, 2013. Specifically, the annual piping tightness and line leak detector tests had not been conducted.
5. Failed to maintain UST records and make them immediately available for inspection upon request by TCEQ personnel, in violation of 30 TEX. ADMIN. CODE § 334.10(b)(1)(B), as documented during an investigation conducted on October 9, 2012 and a record review conducted on September 11, 2013.

### **III. DENIALS**

The Respondent generally denies each allegation in Section II ("Allegations").

### **IV. ORDERING PROVISIONS**

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Gibson Real Estate, LLC, Docket No. 2013-1945-PST-E" to:

Financial Administration Division, Revenue Operations Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. It is further ordered that the Respondent shall undertake the following technical requirements:
  - a. Immediately upon the effective date of this Agreed Order, cease accepting fuel until such time as a valid delivery certificate is obtained from the TCEQ by submitting a properly completed UST registration and self-certification form, in accordance with 30 TEX. ADMIN. CODE § 334.8 to:

Petroleum Storage Tank Registration Team, MC 138  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

- b. Within 30 days after the effective date of this Agreed Order:
  - i. Implement a release detection method for the USTs and the piping associated with the UST system at the Facility, in accordance with 30 TEX. ADMIN. CODE § 334.50; and
  - ii. Begin maintaining UST records and make them immediately available for inspection upon request by TCEQ personnel, in accordance with 30 TEX. ADMIN. CODE § 334.10.
- c. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a. through 2.b.ii. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

with a copy to:

Waste Section Manager  
San Antonio Regional Office  
Texas Commission on Environmental Quality  
14250 Judson Road  
San Antonio, Texas 78233-4480

- 3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
- 4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent

shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier.

## SIGNATURE PAGE

### TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

Pam Moniz  
For the Executive Director

2/26/14  
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

BLG  
Signature

12/8/13  
Date

BROT BARTON  
Name (Printed or typed)  
Authorized Representative of  
Gibson Real Estate, LLC

GENERAL MANAGER  
Title

**Instructions:** Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenue Operations Section at the address in Section IV, Paragraph 1 of this Agreed Order.